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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]

Office: SPOKANE, WA

Date:

DEC 03 2008

IN RE:

Applicant: [REDACTED]

APPLICATION:

Application for Certificate of Citizenship under Section 309 of the Immigration and Nationality Act; 8 U.S.C. § 1409.

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.



John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Field Office Director, Spokane, Washington, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record reflects that the applicant was born on July 4, 1993, in British Columbia, Canada. The applicant's parents, as indicated in her birth certificate, are [REDACTED] and [REDACTED]. The applicant's parents were not married to each other.¹ The applicant's mother is a U.S. citizen, born in 1968 in Washington State. The applicant claims that she acquired U.S. citizenship at birth through her mother and seeks a certificate of citizenship pursuant to section 309 of the Immigration and Nationality Act, 8 U.S.C. § 1409.

The field office director determined that the applicant did not acquire U.S. citizenship from her mother because she failed to establish that her mother was continuously present in the United States for the required period of time. On appeal, the applicant's mother maintains that she was present in the United States continuously from birth until 1972.

“The applicable law for transmitting citizenship to a child born abroad when one parent is a U.S. citizen is the statute that was in effect at the time of the child's birth.” *Chau v. Immigration and Naturalization Service*, 247 F.3d 1026, 1029 (9th Cir. 2000) (citations omitted). The applicant in this case was born in 1993.

Because the applicant was born out of wedlock, the provisions set forth in section 309 of the Act apply to her case. Section 309(c) of the Act, 8 U.S.C. § 1409(c), provides, in relevant part,

a person born, after December 23, 1952, outside the United States and out of wedlock shall be held to have acquired at birth the nationality status of his mother, if the mother had the nationality of the United States at the time of such person's birth, and if the mother had previously been physically present in the United States or one of its outlying possessions for a continuous period of one year.

The record in this case contains the applicant's birth certificate. The record also includes, in relevant part, the applicant's mother's U.S. passport, her Canadian Immigration Identification Card issued in 1972, her college ID card and transcripts evidencing attendance from 1987 to 1989, and the applicant's grandfather's veterinary school transcripts. Additionally, the applicant has submitted letters from her mother and maternal grandparents indicating that the applicant's mother was present in the United States from birth until 1972.

Section 309(c) of the Act, 8 U.S.C. § 1409(c), requires that the applicant establish that she was born out-of-wedlock to a U.S. citizen mother who had been physically present in the United States for a continuous period of one year. The AAO notes that the applicant has consistently maintained that her mother was physically present in the United States from birth until 1972 (when her father, the applicant's grandfather, became employed in Canada). The AAO further notes the evidence of the applicant's mother's college attendance in Washington State from 1987 to 1989.

The AAO notes the Board of Immigration Appeals finding in *Matter of Tijerina-Villarreal*, 13 I&N Dec. 327, 331 (BIA 1969), that:

¹ The AAO notes that the applicant's parents were in a common-law relationship until 1994. They were not, however, legally married under either Canadian or British Columbia law.

[W]here a claim of derivative citizenship has reasonable support, it cannot be rejected arbitrarily. However, when good reasons appear for rejecting such a claim such as the interest of witnesses and important discrepancies, then the special inquiry officer need not accept the evidence proffered by the claimant. (Citations omitted.)

8 C.F.R. § 341.2(c) provides that the burden of proof shall be on the claimant to establish the claimed citizenship by a preponderance of the evidence. In order to meet this burden, the applicant must submit relevant, probative and credible evidence to establish that the claim is “probably true” or “more likely than not.” *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989). The applicant has met her burden and the appeal will be sustained.

ORDER: The appeal is sustained.